

**REQUEST FOR QUALIFICATIONS (RFQ) FOR MISCELLANEOUS
GEOTECHNICAL AND MATERIAL TESTING SERVICES FOR**

THE CITY OF MCKINNEY, TEXAS

**RFQ No. 18-22RFQ ISSUED
Sunday, December 17, 2017**

**Submittals will be accepted by mail or hand delivery no later than
2:00 p.m. CST, Thursday, January 18, 2018, to:**

Lisa Littrell, CPPO, CPPB Purchasing
Manager
1550 South College Street, Building D
McKinney, Texas 75069
P.O. Box 517
McKinney, Texas 75070

Respondents must submit their Statement of Qualifications, the response letter, and all additional documents. Respondents must provide one (1) original and four (4) copies, as well as one electronic copy on USB/CD in PDF format, of all documents requested in a sealed envelope and manually signed in ink by a person having the authority to submit firm's information and qualifications. Any incomplete submittals or submittals received without the five (5) hard copies and the one (1) electronic copy may be considered nonresponsive.

The City of McKinney is always conscious and extremely appreciative of your time and effort in the preparing of this information. Requests for information / clarification should be emailed directly to:

Rosanne Lemus, CPPB
Contract Administrator
City of McKinney
rlemus@mckinneytexas.org

RFQ No. 18-22RFQ

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LEGAL NOTICE

City of McKinney, Texas Advertisement for Submittals

The City of McKinney is accepting qualifications from civil engineering firms who can demonstrate they have the resources, experience, and qualifications to provide on call professional services associated with miscellaneous geotechnical and material testing services.

Documents for this request may be obtained on our electronic procurement system at <https://mckinney.ionwave.net>.

Submittals will be publicly opened and consultant names read aloud in the office of the Purchasing Manager, at the address below, shortly after the specified time for delivery. All submittals must be clearly addressed to the Purchasing Department and include the RFQ name and number on the outside of the envelope/package.

Submittal Deliveries: The City of McKinney cannot guarantee, due to internal mail delivery procedures that any submittals sent priority mail will be picked up from the post office by city mail employees and delivered to the Purchasing Department by the closing date and time. It is recommended that submittal deliveries be made either in person or via an alternate delivery method ensuring delivery to the physical address. Respondents shall bear full responsibility for ensuring that the submittal is delivered to the specified location by due date and time. Late submittals will be considered as non-responsive.

RFQ NAME:	Miscellaneous Geotechnical and Material Testing Services
RFQ NUMBER:	18-22RFQ
DUE DATE/TIME:	2:00 p.m., January 18, 2018
MAIL OR DELIVER TO:	City of McKinney Purchasing Department PO Box 517 1550D South College McKinney, Texas 75069

Accommodations and modifications for people with disabilities are available upon request. Requests should be made as far in advance as possible, but no less than 48 hours prior to the meeting. Submit requests to contact-adacompliance@mckinneytexas.org or to Samantha Frison, ADA Coordinator, 972-547-2694.

The City reserves the right to reject any and all submittals and to waive any informality in submittals received, deemed to be in the best interest of the City. No officer or employee of the City of McKinney shall have a financial interest, direct or indirect, in any contract with the City of McKinney.

First Publication:	12/17/17
Second Publication:	12/24/17

SECTION 1

INTRODUCTION

1.1 Background and Special Concerns:

- A. The City of McKinney, Texas (City) is seeking Statement of Qualifications (SOQ) from experienced geotechnical and material testing firms who can demonstrate they have the resources, experience, and qualifications to provide miscellaneous geotechnical and material testing services. It is the City's intent to short-list geotechnical and materials testing firms to be selected on an as-needed, project-specific basis for the desired geotechnical and materials testing services.

The geotechnical and material testing services are being requested in several work categories including, but not limited to the following:

- Geotechnical Engineering, including soil exploration, onsite and laboratory geotechnical testing in accordance with local industry requirements (e.g. ASTM, TxDOT, AASHTO, etc.);
- Construction materials testing, including concrete, soil/earthwork, asphaltic concrete, steel, masonry, welding, and various other construction material testing services;
- Engineering analyses and transportation foundation studies related to structures, foundations, pavement design, slope-stability, retaining walls, including recommendations for foundation alternatives such as drilled footings, spread footings, settlement, piling, improving bearing capacity, etc;
- Third-party review of geotechnical engineering designs/reports/analysis by others;
- Various other tasks related to geotechnical engineering and materials testing.

A pool of firms will be selected and retained for a period of at least 3 years.

- B. Each firm is responsible for insuring the bound SOQ is responsive. Only firms with geotechnical and material testing experience should submit.

One (1) original and Four (4) copies of the bound SOQ and one electronic PDF copy (CD/DVD/USB) shall be submitted. The bound SOQ can contain up to twelve (12) single sided pages, excluding required supplemental forms that may be included in an appendix or attachment. All pages must be 8-1/2" x 11" and must use a 12 point font size and Arial font type (or similar standard font type). The Response Letter (Section 4) and Attachment (A) (Sample of Professional Services Agreement) will not be considered as part of the page limit.

The SOQ must include the following:

- An organization chart containing the names, addresses, and telephone numbers of the prime provider and any sub-provider's key personnel proposed for the team and their contract responsibilities.

- Discussion of prime providers staffing plan and level of personnel (including any sub-provider's) to be involved, their qualifications, experience, resumes, roles, and identification of the individual(s) who will be in overall charge and responsible for coordination with the City. Any subsequent changes to key members of the project team must be approved in writing, by the City.
- Information showing the team's understanding and approach of the services requested; the project manager's experience with similar projects in the last three (3) years; similar project-related experience of the task leaders in the last three (3) years; and other pertinent information addressed in this notice. For each similar project referenced, identify either the project manager's or the task leader's specific role(s) and work contributed.
- Outline the basic technical procedures and the managerial approach, which the project team leadership will adopt to incorporate these methods into the overall project effort. Provide assurance that adequate staffing is available to provide services efficiently and in a timely fashion.
- Verification in the form of a statement that the proposed team individuals are currently employed by either the prime provider or a sub-provider.
- Reference name and contact information (mailing address, email address, telephone number) for each project referenced in the SOQ.
- Description of the team's Quality Assurance/Quality Control procedures including what is standard practice for all stages of the design process.

1.2 Selection Criteria:

- A. All written bound SOQ submitted will be evaluated by a Selection Committee. The review of the SOQ will be based on the following selection criteria.

35% past experience of firm and team members on comparable projects;
 30% qualifications of firm and project team members;
 25% project approach;
 5% responsiveness of qualifications;
 5% QA/QC procedures

The top ranked firms may be asked to meet with the City and make oral presentations. However, the City may make a selection directly from the written submittals due to the time sensitivity of the projects. The City reserves the right without prejudice to reject any or all submittals.

- B. All questions related to this RFQ must be submitted in writing to remus@mckinneytexas.org by January 12, 2018 before 2:00 PM CST. All questions must include the reference number of this RFQ. Any responses to written questions will be distributed (in the same manner as this RFQ) as an addendum.

1.3 Statutory Requirements for a Professional Services Contract under Chapter 2254 – Professional and Consulting Services of the Texas Local Government Code and City Requirements:

- A. The City is accepting qualifications for a professional consulting services contract, pursuant to Section 2254 *et seq.* of the Texas Local Government Code, in accordance with the terms, conditions, and requirements set forth in this RFQ.
- B. ETHICAL BEHAVIOR - The City of McKinney requires ethical behavior and compliance with the law from all individuals and companies with whom it does business.
- C. Landscape Architects, Architects, Surveyors and Engineers: If the firm employs landscape architects, architects, and / or engineers, the firm will have full responsibility for complying with the requirements of the Texas Occupations Code, Title 6 (Regulation of Engineering, Architecture, Land Surveying, and Related Practices).

1.4 Selection Process:

- A. Selection Process: The deadline for responding to the RFQ is January 18, 2018 prior to 2:00 CST.
 - 1) The City has prepared this RFQ and will evaluate each respondent's experience, technical competence, capability to perform, past performance of the respondent's team and members of the team, and other appropriate factors submitted by the team or firm. Cost-related or price-related evaluation factors will not be used. Each respondent must certify to the City that each engineer that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The City shall review written responses and rank Respondents on demonstrated competence, qualifications, and responsiveness to the RFQ.
 - 2) The Architect or Engineer member of the firm will have full responsibility for complying with all legal requirements, including those of Chapter 1051, Subtitle B of the Texas Occupations Code (Regulation of Architecture and Related Practices) and Chapter 1001, Subtitle A of the Texas Occupations Code (Regulation of Engineering and Related Practices).
 - 3) CONTRACTS – Multiple contracts may be awarded as needed for the types of projects identified in the RFQ and for similar projects developed over a three-year period following the submittal date. Firms will be expected to execute the City's standard professional services contract and to comply with the requirements outlined therein (please see Attachment (A) for a sample of the City's standard

Professional Services Contract).

- 4) The City may request additional information regarding demonstrated competence and qualifications, the feasibility of implementing these project(s) as proposed, the ability of the respondent to meet schedules, or other factors as appropriate.
- B. The successful Respondents will enter into a Professional Services Contract with the City.
- C. Upon execution of the Contract, the Engineering Firm must show ability to provide the City required insurance and bonds, if any.

1.5 Scope of Work:

- A. Project Scope, Schedule: Information about scope and schedule follows:
- 1) Following selection, the Engineering Firm will perform professional engineering services for the Engineering Department as directed by the Director of Engineering or his/her designee.
 - 2) Meet with City staff to review the scope of the project(s), establish project standards and become familiar with any concerns.
 - 3) The firm will perform a professional service for compliance with all state and federal requirements, along with any applicable city requirements.
 - 4) The Engineering firm shall supply formal reports in both hard copy and electronic formats. Drawings, if any, shall be provided in “DWG”, “DGN”, and/or “PDF” formats.
 - 5) Schedule: Perform professional engineering services in a timely manner and within agreed upon timeframes.

SECTION 2

NOTICE TO RESPONDENTS

RFQ Notice:

RESPONDENTS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFQ CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

Submittal Format:

Responses must comply with the submittal requirements set out in this RFQ.

Submittal Deadline:

The City will accept responses to this RFQ until 2:00pm CST on January 18, 2018, after which time all responses timely received will be publicly opened, and the names of the Respondents read aloud. Responses received after the submittal deadline will not be considered.

Place for Submission:

Responses must be submitted to the City of McKinney Purchasing Department by mail or hand delivery as follows:

Lisa Littrell, CPPO, CPPB
Purchasing Manager
1550 South College Street, Building D
McKinney, Texas 75069
P.O. Box 517
McKinney, Texas 75070

It is the responsibility of each Respondent to ensure responses are submitted in a timely manner. The City is not responsible for delays in mail delivery or failure of couriers to deliver responses prior to the expiration of the submission deadline. The City shall not be obligated to reimburse any expenses incurred by any Respondents in preparing their response.

The City's Contact:

Any questions or concerns regarding this RFQ shall be emailed in writing directly to the City of McKinney contact:

Rosanne Lemus, CPPB
Contract Administrator
City of McKinney Purchasing Department
rlemus@mckinneytexas.org

The City specifically requests that Respondents restrict all contact and questions regarding this RFQ to the above named individual.

2.1 Inquiries and Interpretations:

Responses to inquiries that directly affect an interpretation or change to this RFQ will be issued in writing by addendum and made available to all parties recorded by the City as having received a copy of the RFQ. Requests for interpretation or changes to this RFQ must be received by email by the City's contact person listed in Section 2 above by the time and date listed in Section 1.2. All such addenda issued by the City prior to the last date that submittals are required to be received shall be considered part of the RFQ, and the Respondent shall be required to consider and acknowledge receipt of such in its response. Firms receiving this RFQ other than directly from the City are responsible for notifying the City that they are in receipt of a submittal package and are to provide a name and address in the event an addendum is issued. It is the obligation of the Respondent to make sure that it has received all addenda prior to submission of its response. Respondents may obtain information on all addenda issued to the date of inquiry from the City's contact person listed in Section 2 above.

Only those responses to inquiries, which are made by formal written addenda, shall be binding. Oral and other interpretations or clarifications will be without legal effect, and shall not be binding on the City. The Respondent must acknowledge receipt of all addenda in its response.

2.2 Public Information:

The City considers all information, documentation, and other materials requested to be submitted in response to this solicitation to be of a non-confidential and / or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded.

Respondents are hereby notified that the City strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

2.3 Respondent's Acceptance of Evaluation Methodology:

WAIVER OF CLAIMS: Each Respondent by submission of a response to this RFQ waives any claims it has or may have against the City, its consulting engineers, or any other consultants, and their respective employees, officers, members, directors and partners; the City's representative and its employees, officers, members, directors and partners; and the City, its employees, officers and elected officials, agents, representatives, that are connected with or arising out of this RFQ, including, the administration of the RFQ, the RFQ evaluation, and the selection of qualified Respondents to receive an RFQ. Submission of qualifications indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective

judgments must be made by the City during the determination of qualification. Without limiting the generality of the foregoing, each Respondent acknowledges that the basis of selection and that the evaluations shall be made public in accordance with applicable law and waives any claim it has or may have against the above-named persons, due to information contained in such evaluations.

2.4 Respondent's Commitment:

Respondent understands and agrees that the City has the ability to terminate its selection process at any time, and to reject any and all responses, or any and all submittals, and that the City has made no representation, written or oral, that it will award a contract for these project(s). Furthermore, Respondent recognizes and understands that any cost incurred by the Respondent which arises from Respondent's submittal of a response to this RFQ, or any subsequent submittal to the City's future RFQ for Professional Services, if applicable, shall be the sole responsibility of Respondent.

2.5 Respondents Eligibility:

Only individual firms or formal joint ventures may respond to this RFQ. Two firms may not respond jointly unless they have formed a joint venture. (This does not preclude a Respondent from having sub-consultants.)

2.6 Key Events Schedule:

The tentative timeline established by the City for its selection process is:

Issue RFQ:	Sunday, December 17, 2017
Interpretation Deadline:	2:00 PM CST, Friday, January 12, 2018
Issue Addendum:	Monday, January 15, 2018
RFQ Deadline:	2:00 PM CST, Thursday, January 18, 2018

This timeline is subject to change by City.

2.7 Insurance Requirements:

The successful Respondent will be required to obtain the following insurance:

- A. Before commencing work, the firm shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City of McKinney. The firm shall furnish to the City of McKinney Contract Administrator certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Certificates shall reference the project / contract number and be addressed as follows:

RFQ No. 18-22RFQ
Miscellaneous Geotechnical and Material Testing Services
City of McKinney
PO Box 517
McKinney, Texas 75070
or email to: rlemus@mckinneytexas.org

- 1) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
 - 2) Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
 - 3) Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
 - 4) Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000 per claim, \$2,000,000 annual aggregate.
- B. With reference to the foregoing required insurance, the firm shall endorse applicable insurance policies as follows:
- 1) A waiver of subrogation in favor of City of McKinney, its officials, employees, agents and officers shall be contained in the Workers'

Compensation insurance policy.

- 2) The City of McKinney, its officials, employees, agents and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
 - 3) All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) day's notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent.
- D. The firm agrees to comply with all applicable provisions of Texas Administrative Code.

SECTION 3

SUBMITTAL REQUIREMENTS

3.1 General Instructions:

- A. Respondents should carefully read the information contained herein and submit a complete response to all requirements and questions, as directed.
- B. Responses and any other information submitted by Respondents in response to this RFQ shall become the property of the City.
- C. The City will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for submittal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit qualifications and other submittal information in response to this RFQ at their own risk and expense.
- D. Responses that are incomplete or qualified with conditional clauses, or alterations, or items not called for in the RFQ documents, or irregularities of any kind, are subject to disqualification by the City, at its option. The City reserves the right to waive any irregularity or informality in a response or submittal.
- E. Each response should be prepared simply and economically, providing a straightforward, concise description of the Respondent's ability to meet the requirements of this RFQ. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the City's needs.
- F. The City makes no guarantee that an award will be made as a result of this RFQ or any subsequent RFQ, and reserves the right to accept or reject any or all submittals, waive any formalities, irregularities, or minor technical inconsistencies, or delete any item / requirements from this RFQ or contract when deemed to be in the City's best interest. Representations made within the submittal will be binding on responding firms.
- G. Failure to comply with the requirements contained in this RFQ may result in a finding that the Respondent is not qualified and is ineligible to submit a submittal in response to any subsequent RFQ.
- H. Only individual firms or formal joint ventures may apply. Two firms may not apply jointly unless they have formed a joint venture. Any associates will be disqualified. (This does not preclude a Respondent from having sub-consultants.)

3.2 Preparation and Submittal Instructions:

A. Respondents must complete, sign and return the attached Response Letter to RFQ, Section 4, as part of their submittal. Respondent's company official(s) authorized to execute such submittals on behalf of Respondent must sign submittals. Failure to sign and return these forms will subject your submittal to disqualification.

B. Page Size, Binders and Dividers:

Submittals must be comply with the instructions and page limits on page 5 of this RFQ. Covers, table of contents, and divider tabs will not count as pages, provided no additional information is included on those pages.

C. Pagination:

All pages of the submittal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

D. Number of Copies:

Submit a total of one (1) original, so labeled, and four (4) complete hard copies of the entire response, along with an electronic copy on USB/CD in PDF format. An original signature must appear on the original hardcopy response.

E. Submission:

- 1) The RFQ number and submittal date must be shown in the lower left-hand corner of your sealed submittal envelope (or box or container).
- 2) The materials submitted must be enclosed in a sealed envelope (or box or container); the package must show clearly the submittal deadline; the RFQ number must be clearly visible; and name, telephone number, and the return address of the Respondent must be clearly visible on the outside of the sealed envelope (or box or container).
- 3) Late submittals properly identified will be returned to Respondent unopened. Late submittals will not be considered under any circumstances.

- 4) Telephone (“PHONE”) submittals are not acceptable when in response to the RFQ.
- 5) Facsimile (“FAX”) submittals are not acceptable when in response to this RFQ.
- 6) Internet (“E-mail”) submittals are not acceptable when in response to this RFQ.

3.3 Pricing:

Submittals shall not include proposal of fees, pricing, or other compensation.

Pricing will be solicited from firms qualified by the City at a later time.

3.4 Submittal Checklist:

Respondents are instructed to complete, sign, and return the following documents as a part of their submittal. Failure to return these documents may subject your submittal to disqualification.

- Respondent’s Responses to Requested Information
- Signed and Completed Response Letter to RFQ (reference Section 4)
- Reference page

SECTION 4

RESPONSE LETTER TO RFQ NO. 18-22RFQ

Lisa Littrell, CPPO, CPPB
Purchasing Manager
1550 South College Street, Building D
McKinney, Texas 75069
P.O. Box 517
McKinney, Texas 75070

Ms. Littrell;

This response is being submitted by the undersigned, on behalf of the Respondent

_____.

The person signing this response on behalf of the Respondent represents to the City that:

- 1) The information provided herein is true, complete and accurate to the best of the knowledge and belief of the undersigned; and
- 2) Respondent has received the Addenda to this RFQ, specifically, Addenda numbered _____.

Executed this _____ day of _____, 2018.

RESPONDENT:

By: _____

Name: _____

Title: _____

Certificate of Interested Parties (Form 1295)

(Required by Awarded Vendor(s) Only)

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Filing Process:

The commission has made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the City of McKinney.

The City of McKinney must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the City of McKinney.

Form Availability:

Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

For questions regarding and assistance in filling out this form, please contact the Texas Ethics Commission at 512-463-5800.

REFERENCES

List at least three (3) companies or governmental agencies (preferably a municipality) where the same or similar products and/or services as contained in this specification package were recently provided.

COMPANY NAME

Contact Person

Title

Address

PO Box

City

State

Zip

e-mail

Phone Number

Fax Number

COMPANY NAME

Contact Person

Title

Address

PO Box

City

State

Zip

e-mail

Phone Number

Fax Number

COMPANY NAME

Contact Person

Title

Address

PO Box

City

State

Zip

e-mail

Phone Number

Fax Number

ATTACHMENT (A)
(Sample of Professional Services Agreement)

THE STATE OF TEXAS §
 § **Professional Services Contract**
COUNTY OF COLLIN§ with _____

THIS CONTRACT is entered into on this _____ day of _____, 20__, by and between the **CITY OF MCKINNEY, TEXAS**, a municipal corporation located in Collin County, Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and _____ ("hereinafter referred to as "CONSULTANT") whose address is _____.

WITNESSETH:

WHEREAS, CITY desires to obtain professional services from CONSULTANT for _____; and

WHEREAS, CONSULTANT is an accounting, professional planning, urban design, or _____ firm qualified to provide such services and is willing to undertake the performance of such services for CITY in exchange for fees hereinafter specified; NOW, THEREFORE,

IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily provided by competent members of the accounting, professional planning, urban design, or _____ professions, both public and private, currently practicing in the same or similar locality under the same or similar circumstances and professional license including but not limited to the exercise of reasonable, informed judgments and prompt, timely action considering the ordinary professional skill and care of a competent professional accountant, planning professional, urban design professional, or _____ professional. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to _____ specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof

as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed _____ Thousand _____ and No/100 Dollars (\$ _____) ("Total Payment Amount"). CONSULTANT will also be compensated for the following reasonable and documented reimbursable expenses, if any, from the Total Payment Amount to the extent such expenses are directly related to CONSULTANT's performance of the Project, and to the extent the total amount of such reimbursable expenses do not exceed _____ and No/100 Dollars (\$ _____): printing; photocopying; reproduction of drawings and specifications; postage; courier delivery services; long distance telephone calls; and, mileage at the allowable rate established by the Internal Revenue Service. Additional expenses, which are extraordinary in nature, shall be approved in advance by CITY in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the CITY pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the CITY shall remain the sole responsibility of the CONSULTANT.

CONSULTANT will bill CITY on a percent complete basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by CITY in writing to proceed. The scope of services shall be strictly limited. CITY shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless CITY shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to CITY an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice CITY shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted. Such payments shall be subject to the Texas Prompt Payment Act, Texas Government Code §§ 2251.001, *et seq.*

Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV.

Revisions of the Scope of Services

CITY reserves the right to revise or expand the scope of services after due approval by CITY as CITY may deem necessary, but in such event CITY shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide CITY a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by CITY under this Contract, CITY must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require McKinney City Council approval and is subject to the current budget year limitations.

V.

Term

This Contract shall begin on the date first written above, and shall terminate when CITY has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI.

Contract Termination Provision

This Contract may be terminated at any time by CITY for any cause by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract. CONSULTANT shall invoice CITY for all Services completed and shall be compensated in accordance with the terms of this Contract for all Services performed by CONSULTANT through the date such written notice of termination is received by CONSULTANT.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY without restriction on future use. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.

Insurance Requirements

A. Before commencing work, the consultant shall, at its own expense, procure, pay for and

maintain during the term of this Contract the following insurance written by companies approved by the state of Texas and acceptable to the City of McKinney. The consultant shall furnish to the City of McKinney Purchasing Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

City of McKinney
Attn: Lisa Littrell
PO Box 517
McKinney, Texas 75070
Or email to:
llittrell@mckinneytexas.org

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
4. Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000 per claim, \$2,000,000 annual aggregate.

NOTE: If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *thirty-six (36) months* following completion of the contract and acceptance by the City of McKinney.

- B. With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:
1. A waiver of subrogation in favor of City of McKinney, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
 2. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and, the City of McKinney shall be provided a defense to any and all claims and causes of action arising out of or related to this Agreement as may be provided pursuant to CONSULTANT's general liability

insurance policies.

Nothing contained in Section XII of this Agreement shall be interpreted or applied as limiting, reducing, or eliminating any obligation or duty that CONSULTANT's insurance carrier may owe to CITY as an additional insured, pursuant to endorsement CG2026 or broader under the CONSULTANT's general liability insurance policies required by this Agreement, to provide the CITY with a defense and/or indemnify the CITY for any claim or cause of action, whether one or more, regardless of the proportionate responsibility or liability of the CONSULTANT or the CITY. Neither shall anything contained in this Section VIII be interpreted or applied as providing or otherwise entitling either CONSULTANT, CONSULTANT's insurance carrier or any other party any right or ability to recover over against CITY any amounts of money attributable to damages, costs, expenses and/or attorneys' fees based on or arising out of a finding of comparative or proportionate responsibility or liability as against the CITY it being understood and agreed that CITY in no way intends by this Agreement to waive its sovereign immunity regarding any claim, suit or cause of action.

- 3.. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for any reason other than nonpayment of premium.
 4. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least ten (10) days' notice in advance of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for nonpayment of premium or by CONSULTANT for any reason.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.
- D. The CONSULTANT shall notify CITY in writing at least thirty (30) days prior to CONSULTANT cancelling or making any material change to any coverage(s) provided in, or through, the insurance policies required under this Section VIII. Failure by CONSULTANT to provide CITY the notice required hereunder may, in the sole discretion of CITY, be deemed a material breach of this Agreement.

IX.

Right to Inspect Records

CONSULTANT agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits.

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and

appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. CITY shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

CITY and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.

CONSULTANT's Liability

Acceptance of the final plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants.

XII.

INDEMNIFICATION

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM CONSULTANT'S PERFORMANCE UNDER THIS CONTRACT AND WHICH ARE CAUSED BY THE INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B).

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY, AS WELL AS INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER.

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES IN PROPORTION TO THE CONSULTANT'S LIABILITY AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES,

INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY IN PROPORTION TO THE CONSULTANT'S LIABILITY.

In its sole discretion, the CITY shall have the right to approve counsel to be retained by CONSULTANT in fulfilling its obligation to defend and indemnify the CITY. CONSULTANT shall retain approved counsel for the CITY within seven (7) business days after receiving written notice from the CITY that it is invoking its right to indemnification under this Contract. If CONSULTANT does not retain counsel for the CITY within the required time, then the CITY shall have the right to retain counsel and the CONSULTANT shall pay these reasonable attorneys' fees in proportion to the CONSULTANT'S liability plus expenses. The CITY retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to take such action.

XIII.
Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of CITY in the performance of this Contract. No term or provision of or act of CONSULTANT or CITY under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

XIV.
Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to CITY to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess. CONSULTANT'S liability under this provision shall be limited to the total dollar amount of this Contract.

CITY's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at CITY's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to CITY; or,
- (c) Monetary damages in an amount not to exceed the greater of:

(1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage; or,

(2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XV. Changes

CITY may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between CITY and CONSULTANT shall be incorporated by written modification to this Contract.

XVI. Conflict of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

In addition, CONSULTANT shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time CONSULTANT submits this signed Contract to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The CONTRACTOR must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the CONTRACTOR must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the CITY.

The CITY must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Contract binds all parties to the Contract. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the CITY.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

XVII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning City of McKinney, its affiliates and subsidiaries, and all oral and written information concerning CITY or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority.

XVIII.
Mailing Address

All notices and communications under this CONTRACT to be mailed to CITY shall be sent to the address of CITY's agent as follows, unless and until CONSULTANT is otherwise notified:

City of McKinney
Post Office Box 517
McKinney, Texas 75069.

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until CITY is otherwise notified:

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XIX.
Applicable Law

The CONTRACT is entered into subject to the McKinney City Charter and ordinances of CITY, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including

performance and execution.

XX.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXI.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXII.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXIII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXIV.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXV.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in McKinney, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Collin County, Texas.

XXVI.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (CITY and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with CITY or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XXVII.
No Boycotting of Israel

Pursuant to the requirements of Texas Government Code Chapter 2270, CONSULTANT hereby affirms and verifies by its signature on this Contract below that CONSULTANT:

- (a) does not boycott Israel; and
- (b) will not boycott Israel during the term of this Contract.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

(Consultant's Name)

By: _____

Name: _____

Title: _____

Date Signed: _____

THE STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20_____.

Notary Public Collin County, Texas
My commission expires _____

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
20_____, by _____ in his capacity as _____ of
_____, a _____ Corporation, known to me to be the person whose
name is subscribed to the foregoing instrument, and acknowledged that he executed the same on
behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20_____.

Notary Public _____ County, Texas
My commission expires _____